IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) CIVIL MISC. APPEAL No. 958 of 2004

UNION OF INDIA & ORS
V/S
GANESH GOVT. & RURAL WORKS

(2) CIVIL MISC. APPEAL No. 957 of 2004

UNION OF INDIA & ORS
V/S
GANESH GOVT. & RURAL WORKS

Mr. KAMAL DAVE, for the appellant / petitioner

Mr. SHYAM LADRECHA, for the respondent

Date of Order : 16.2.2005

HON'BLE N P GUPTA,J.

ORDER

Both these appeals arise in identical circumstances, and involve identical question, therefore, they are being disposed of by this common order.

The matters come up for consideration of stay petition, rather second stay petition. However, in view of the controversy involved being short, at the request of learned counsel for the parties, the matters have been finally heard at this stage itself.

By the impugned order, the learned trial Court has dismissed the appellant's objections, filed against the award being made the rule of the Court, as time barred, while according to the learned counsel for the appellant, the objections cannot be said to be time barred.

The factual aspect in this regard is, that the award in this case was passed by the arbitrator on 1.3.2003, and the arbitrator informed the appellant by a letter on 21.3.2003, that the appellant may take copy of the award, while the appellant went to obtain the copy on 17.8.2003, and thereupon, the arbitrator informed, that legal position is, that the appellant will not get copy of the award till his fees are paid. Thereupon, the necessary steps were taken for obtaining sanction for payment of the fees of the arbitrator, and ultimately, it was on 10.9.2003, that the fees of the arbitrator was paid and the copy of the award was received, and the objections have been filed within 90 days

from this date 10.9.2003.

Learned trial Court has gone on the consideration, that the time prescribed in Section 34 cannot be extended, as the provisions of Section 5 of the Limitation Act are not applicable, and therefore, the objections have been dismissed.

In my view, the contention of the appellant has force, True it is that Section 5 of the Limitation Act is not applicable to this matter, and the delay cannot be condoned, but at the same time, the question does remain, as to whether there is any delay at all, or not, in other words, as to whether the objections have been filed within the stipulated period of 90 days, or not?

I may gainfully quote the provisions of Section 34(3) of the Arbitration and Conciliation Act, 1996, which read as under:

> "S.34(3) an application for setting aside may not be made after three months have elapsed from the date on which the party making the application had received the arbitral award of, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal;
>
> Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

A bare reading of this sub-section shows, that the period of three months is to be computed from "<u>date on which the party making the application has received the arbitral award</u>". The other part of the section is not relevant for the present purpose. The Section does not contemplate the commencement of the date of three months from the date on which the party could have received the arbitral award, and it commences only from the date when the party has received the award. May be, that the arbitrator informed the appellant on 21.3.03 to collect the copy of the award, and may be, that on account of some financial problem, the copy of the award may not have been obtained by the appellant, but on that count, the period of three months cannot be said to have commenced from the date on which the appellant was required to collect the copy of award, according to the letter of the arbitrator. Admittedly, the appellant has received the copy of the award on 10.9.2003 only, and since it is not in dispute, that the objections have been filed within a period of three months, computed from this date i.e. 10.9.2003, it cannot be said that the objections were time

barred.

The net result is that the impugned order cannot be sustained. The appeal is therefor allowed, the impugned order is set aside, and the matter is sent back to the learned trial Court, with a direction to decide the objections on merits, in accordance with the law, and most expeditiously.

The parties are directed to appear before the learned trial Court on 11th March 2005, as prayed.

(N P GUPTA),J.

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